

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARY CHANDLER AND MICHAEL
CHANDLER, husband and wife,

Plaintiffs,

v.

GREENSTONE LTD., et al.

Defendants.

Case No. 04-1300RSL

**PLAINTIFFS' REPLY IN SUPPORT OF
THEIR MOTION *IN LIMINE* NO. 27, TO
EXCLUDE REFERENCES OR
ARGUMENT THAT ANY TOXINS,
POLLUTANTS, PESTICIDES OR
PROXIMITY TO A SUPERFUND SITE
CONTRIBUTED TO PLAINTIFF'S
BREAST CANCER.**

Defendants claim that their own experts, as well as the jury, should be allowed to speculate that some amount of unknown exposure, to some unknown environmental toxins, caused Mrs. Chandler's breast cancer. Defendants do not offer a single expert report in support of this speculation. Indeed, the three defense experts admit they have no idea what caused Mrs. Chandler's breast cancer (see Plaintiffs' Reply in Support of Motion *in Limine* No. 13).

Defendants cite two review papers, not any original research or data, in their opposition brief. However, neither of these review papers was cited – let alone discussed – in any of the three defense experts' causation reports.

Defendants also overlook the well established principle that the evidentiary requirements

1 for reliability of opinion testimony apply with equal force to their experts. The proponent of the
 2 evidence bears the burden of establishing that the pertinent admissibility requirements are met by
 3 a preponderance of the evidence. Advisory committee note (2000 amendments) to Fed. R. Evid.
 4 702. The expert's bald assurance of validity does not satisfy the requirements of *Daubert* and
 5 Rule 702. *Daubert v. Merrell Dow Pharms., Inc.*, (“*Daubert II*”), 43 F.3d 1311, 1316 (9th Cir.
 6 1995). “Rather, the party presenting the expert must show that the expert's findings are based on
 7 sound science, and this will require some objective, independent validation of the expert's
 8 methodology.” *Id.*

9 Establishing these requirements for all parties is necessary because any expert's opinion
 10 “can be both powerful and quite misleading because of the difficulty in evaluating it.” *Daubert*
 11 *v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 595 (1993) (internal citations and quotation marks
 12 omitted). As the Ninth Circuit cautioned, “Maintaining *Daubert's* standards is particularly
 13 important considering the aura of authority experts often exude, which can lead juries to give
 14 more weight to their testimony. *Elsayed Mikhtar v. California State Univ., Hayward*, 299 F.3d
 15 1053, 1063-64 (9th Cir. 2002).

16 To allow defendants to suggest, directly or by cross examination, that exposure to
 17 pesticides or some other unidentified environmental toxin was the cause Mary Chandler's breast
 18 cancer would permit the very type of misleading, scientifically and factually unsupported claims
 19 that Rule 702 and *Daubert* intended to exclude.

20 Dated: September 20, 2011.

21 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of September, 2011 a copy of the foregoing document was served according to this Court's provision for service as set forth in the pretrial orders via ECF notification:

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